



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

200925044

Uniform Issue List: 72.00-00; 72.20-00; 72.20-04

MAR 23 2009

Legend

Taxpayer A =

IRA X =

IRA Y =

IRA Z =

Company M =

Company N =

Company O =

Amount 1 =

Amount 2 =

Date 1 =

Date 2 =

Year 1 =

Dear:

SE:T:EP:RA:T4

This is in response to the letter dated August 1, 2008, submitted on your behalf by your authorized representative, in which you request a ruling that the distribution from your individual retirement arrangement (IRA) described in your letter ruling request did not result in a modification to a series of substantially equal periodic payments and, therefore, is not subject to the additional 10 percent income tax imposed on premature distributions under section 72(t) of the Internal Revenue Code (the "Code").

Under penalty of perjury, the following facts and representations have been submitted in support of the ruling request:

Taxpayer A, age 56, maintained IRA X with Company M. Taxpayer A also maintained IRA Y with Company M. On Date 1, Taxpayer A began receiving distributions from IRA X in the annual amount of Amount 1, which amount was calculated using the fixed amortization method described in Notice 89-25, 1989-1 C.B. 662., and was intended to be a series of substantially equal periodic payments as described in section 72(t)(2)(A)(iv) of the Code. It has been represented that Taxpayer A received an annual distribution of Amount 1 from IRA X each calendar year from 2002 to 2008.

Taxpayer A represents that beginning in early January of Year 1 she consulted with her financial advisor as to whether she could convert a portion of her equities in IRA X into cash due to market downturns. While her financial advisor stated that she could convert a portion of IRA X into cash without sustaining penalties for the conversion, he also indicated that Company M did not offer a CD investment in certificates of deposit and suggested that Taxpayer A transfer the amount to an IRA at another financial institution. Based upon this advice, on Date 2, Taxpayer A transferred Amount 2 from IRA X, as well as the entire amount of IRA Y, by means of a trustee-to-trustee transfer, to IRA Z which is maintained by Company N.

Taxpayer A represents further that in May of Year 1, pursuant to discussions with representatives of Company O about transferring the remaining assets of IRA X from Company M to an IRA at Company O, she was informed that the partial transfer of Amount 2 from IRA X to IRA Z caused a modification of a series of substantially equal periodic payments. During a subsequent conversation with her financial advisor, she was also informed that the transfer of Amount 1 would result in a 10 percent additional tax plus interest on all amounts that had been distributed from IRA X. This request for a letter ruling followed shortly thereafter.

Based on these facts and representations, the following rulings are requested:

1. That, the partial transfer of IRA X, being combined with IRA Y into the new IRA Z, not be considered a modification to the series of substantially equal periodic payments under section 72(t)(4), that will result in the imposition of the 10% additional tax under section 72(t)(1) of the Code, and

2. That, a proposed corrective action to transfer back the partial transfer held in IRA Z, along with the related earnings, to IRA X not be considered a modification to the series of substantially equal periodic payments under section 72(t)(4) of the Code that will result in the imposition of the 10% additional tax under section 72(t)(1) of the Code.

With respect to your ruling requests, section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid

or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 72 of the Code provides rules for determining how amounts received as annuities, endowments, or life insurance contracts and distributions from qualified plans are to be taxed.

Section 72(t)(1) provides for the imposition of an additional 10 percent tax on early distributions from qualified plans, including IRAs. The additional tax is imposed on that portion of the distribution that is includible in gross income.

Section 72(t)(2)(A)(iv) of the Code provides that section 72(t)(1) shall not apply to distributions that are part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or joint lives (or joint life expectancies) of such employee and his designated beneficiary.

Section 72(t)(4) of the Code imposes the additional limitation on distributions excepted from the 10 percent tax by section 72(t)(2)(A)(iv) that, if the series of payments is subsequently modified (other than by reason of death or disability) before the later of the employee's attainment of age 59 1/2, or the close of the 5-year period beginning with the date of the first payment and after the employee attains age 59 1/2, then the taxpayer's tax for the first taxable year in which such modification occurs shall be increased by an amount, determined under regulations, equal to the tax that would have been imposed except for the section 72(t)(2)(A)(iv) exception, plus interest for the deferral period.

Notice 89-25 was published on March 20, 1989, and provided guidance, in the form of questions and answers, on certain provisions of the Tax Reform Act of 1986 (TRA '86). In the absence of regulations on section 72(t) of the Code, this notice provides guidance with respect to the exception to the tax on premature distributions provided under section 72(t)(2)(A)(iv). Q&A-12 of Notice 89-25 provides three methods of determining substantially equal periodic payments for purposes of section 72(t)(2)(A)(iv) of the Code.

Revenue Ruling 2002-62, 2002-2 C.B. 710, modified Q&A-12 of Notice 89-25. Rev. Rul. 2002-62 provides, among other things, that payments are considered to be substantially equal periodic payments within the meaning of section 72(t)(2)(A)(iv) if they are made in accordance with the required minimum distribution method, the fixed amortization method or the fixed annuitization method (the three methods described in Q&A-12 of Notice 89-25).

Section 2.02(e) of Revenue Ruling 2002-62 further provides that under all three methods, substantially equal periodic payments are calculated with respect to an account balance as of the first valuation date selected. Thus, a modification to the series of payments will occur, if after such date, there is (i) any addition to

the account balance other than gains or losses, (ii) any nontaxable transfer of a portion of the account balance to another retirement plan, or (iii) a rollover by the taxpayer of the amount received resulting in such amount not being taxable.

In this case, on Date 1, Taxpayer A began receiving payments from her IRA X in the amount of Amount 1 calculated using the fixed amortization method described in Notice 89-25. On Date 2, Taxpayer A transferred Amount 2 by means of a trustee-to-trustee transfer from IRA X to IRA Z. The transfer on Date 2 occurred prior to the end of the period described in Code section 72(t)(4), and was a nontaxable transfer of a portion of the account balance in IRA X.

Based on the above facts and representations, pursuant to section 2.02(e) of Rev. Rul. 2002-62, we determine that the Date 2 transfer from IRA X to IRA Z constituted a modification to the series of substantially equal payments which Taxpayer A began to receive from her IRA X on Date 1.

Thus, as a result, we conclude with respect to your ruling requests that the transaction described above, consisting of the Date 2 transfer from IRA X to IRA Z, constituted a modification to a series of substantially equal periodic payments as described in Code section 72(t)(4). We further conclude that this cannot be corrected by transferring Amount 2 back to IRA Y.

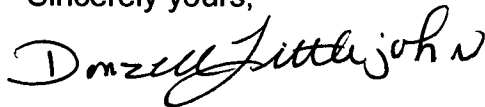
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact \*\*\*, I.D. No. \*\*\*, at (202) \*\*\*. Please address all correspondence to SE:T:EP:RA:T4,

Sincerely yours,



Donzell H. Littlejohn, Manager  
Employee Plans, Technical Group 4

Enclosures:  
Deleted Copy of Ruling Letter  
Notice of Intention to Disclose

cc: